*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

+ WRIT PETITION No.24220 OF 2006

% 14-06-2007

M/s.Sri Venkata Sai Restaurant and Bar.

...Petitioner.

Versus

$ The Government of Andhra Pradesh and others.

...Respondents.

! Counsel for the Petitioner : Mr. K.L.N.Swamy, Advocate.

^ Counsel for Respondents: Government Pleader for Prohibition and Excise.

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> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.24220 of 2006

Between:

M/s.Sri Venkata Sai Restaurant and Bar.

.. PETITIONER

and

The Government of Andhra Pradesh and others.

.. RESPONDENTS

ORDER:

Heard the learned counsel appearing for the petitioner as well as the learned Government Pleader appearing for the respondents.

2. Petitioner submits that after obtaining prior clearance from the Commissioner of Prohibition and Excise, Hyderabad, vide proceedings in Cr.No.11197/2006/CPE/K3, dated 11-08-2006, for grant of license in Form 2B for sale of Indian made Foreign Liquor and Foreign Liquor in premises bearing Door No.3-181/1, Vemagiri Junction, Vemagiri, Rajahmundry, East Godavari District, for the Excise Year 2006-07,

he filed an application dated 25-08-2006, before the Prohibition and Excise Superintendent, along with necessary documents after duly paying application fee of Rs.10,000/- for grant of license in Form 2B.

The Prohibition and Excise Superintendent, after verifying the said application as to the legal requirements, forwarded the same to the Deputy Commissioner of Prohibition and Excise, Kakinada, who, in turn after examining the proposal and inspecting the proposed Bar premises, passed an order, dated 27-09-2006, requesting the third respondent to take necessary action in the matter for issuance of license under Rule 11 in Form 2B for the Excise Year 2006-07.

In pursuance of the same, the petitioner paid an amount of Rs.8,00,000/- on 05-10-2006 towards the 1st installment of license fee and furnished bank guarantee for a sum of Rs.8,00,000/- as security towards second installment of license fee on the same day i.e.,

on 05-10-2006 and requested to issue the license. Accordingly, the Prohibition and Excise Superintendent, issued license vide proceedings Rc.No.295/2006/A3, dated 05-10-2006, to the petitioner for sale of Indian made Foreign Liquor and Foreign Liquor on the aforesaid premises.

3. Petitioner further submits that the license granted on 05-10-2006 was valid up to 30-06-2007 and as per Rule 10 (3) (b) (ii) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of License) Rules, 2005 (for short “the Rules”), he is liable to pay only

3/4th of the annual license fee. The grievance of the petitioner is that the respondents are insisting upon him for payment of the full annual license fee.

4. The only question that arises for consideration is as to whether the petitioner is liable to pay the full annual license fee in respect of the license that was granted to him on 05-10-2006.

5. Before going to deal with the merits of the case, it is pertinent to note that the license in question has been granted under the provisions of the Rules.

6. At this juncture, it is relevant to elicit the definition of the "License", "Licensee", "License Fee" and "License Period" under the Rules for the purpose of adjudicating the issue involved in this writ petition.

> As per Rule 3(i), "License" means license granted under these rules.
>
> As per Rule 3(j), "Licensee" means holder of such license.
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> As per Rule 3 (k), "License Fee" means annual license fee as shown in the schedule appended to these rules and includes proportionate license fee.
>
> As per Rule 3 (l) "License period" means a period of 12 months beginning from the 1st July of the year and ending with 30th of June of the succeeding year or part thereof.
>
> As per Rule 10 (1), the annual license fee for Form 2B license shall be at the rates as shown in the Schedule appended to these rules.
>
> As per the Schedule appended to Rule 10, the license fee for the privilege at Bar for sale of Indian made Foreign Liquor and Foreign Liquor to be consumed on the licensed premises is Rs.18,00,000/- per year in places where the population of the village/ town / city is above seven lakhs.

7. In the instant case, it is stated that the population of Rajahmundry is not exceeding seven lakhs and, therefore, the annual license fee payable by the petitioner is only Rs.16,00,000/-.

Under Rule 5, the person intending to establish a Bar shall submit an application in Form 1-A to the Commissioner enclosing a challan of Rs.1,000/-

to get prior clearance and the grant of prior clearance shall not confer any right on the applicant for grant of license in Form 2B. After getting clearance, the holder of prior clearance in Form 2-A, shall apply in Form 1-B for grant of license for a Bar to the concerned Prohibition and Excise Superintendent of the District where the applicant's premises is to be licensed, along with a challan of Rs.10,000/- towards application fee. The Prohibition and Excise Superintendent, after making such enquiry and after verifying the particulars furnished in the application, should examine the suitability of the premises for granting Bar and forward the same to the Deputy Commissioner of Prohibition and Excise of the Division along with his report. The Deputy Commissioner of Prohibition and Excise, after causing such enquiry, is entitled to grant license. Before issuance of the license, the applicant shall execute a counter part agreement in Form 4-B.

8. Under Rule 11, the Deputy Commissioner of Prohibition and Excise is the competent authority to grant the privilege of Bar. The Prohibition and Excise Superintendent shall issue the license in the prescribed Form 2-B.

9. Rule 10 of the Rules, makes it clear that if the license is granted between 1st July and 30th September, full annual license fee has to be paid and if the license is granted between 1st October and 31st December, 3/4th of the annual license fee has to be paid and if the license is granted between 1st January and 31st March, half of the annual license fee has to be paid and if the license is granted between 1st April and 30th June, 1/4th of the annual license fee has to be paid.

Thus, in the light of the Rules, the excise year has been divided into four quarters i.e., each quarter consisting of three months. Even if the license is granted in the beginning or in the middle of a quarter or at the end of that quarter, the entire license fee has to be paid for the said quarter and for the

remaining quarters.

10. Now, coming to the case on hand, admittedly, the Deputy Commissioner of Prohibition and Excise, Kakinada, granted the privilege at Bar for sale of Indian made Foreign Liquor and Foreign Liquor to the premises of the petitioner bearing door No.3-181/1, Vemagiri Junction, Vemagiri, Rajahmundry, East Godavari District on 27-09-2006 and requested the Prohibition and Excise Superintendent, Rajahmundry unit to issue license under Rule 11 in Form 2-B for the excise year 2006-07, the license was granted on 05-10-2006, as the petitioner paid half of the annual license fee and furnished bank guarantee for remaining half of the annual license fee only on 05-10-2006.

11. The learned Government Pleader appearing for the respondents submits that the competent authority to grant license is the Deputy Commissioner of Prohibition and Excise and that the order, dated 27-09-2006, is a grant of license and thereby, the petitioner falls within the range of the license period of 1st July and 30th September and therefore, he has to pay the full annual license fee as per Rule 10 of the Rules.

12. To appreciate the said argument, it requires to be noticed that under Rule 9 of the Rules, every Bar shall be valid for one year commencing from 1st July and ending with 30th June of the succeeding year subject to payment of license fee as prescribed, provided that the license issued on or after the 1st July shall be valid up to 30th June of the succeeding year and that the license granted for a part of the license period shall be valid for such period as may be specified by the licensing authority. Further, every licensee shall commence his business from the 1st July or such other date as may be specified in the license.

Under Rule 3(l), the 'license period' means a period of twelve months

beginning from the 1st July of the year and ending with 30th June of the succeeding year or part thereof. Therefore, the license period, in the instant case, is only from 05-10-2006 to 30-06-2007. In fact, the lease cannot be said to be commenced unless the license is issued permitting sale of the liquor on the premises.

13. Rule 10 (3) (b) prescribes the payment of annual license fee in respect of the license granted during the currency of the license period. In the instant case, as the license is granted after 1st October and before 31st December, the petitioner is liable to pay only 3/4th of the annual license fee under Rule 10 (3) (b)(ii).

When a specific mode of computation of the license fee is contemplated under Rule 10 (3) (b) (ii) of the Rules, basing on the month during which the license is granted, I am of the opinion that the respondents cannot act contrary to the said Rule. As already stated above, the lease cannot be said to be commenced unless and until license is granted and any commencement of such business prior to issuance of license, is liable to be penalized under the provisions of A.P. Excise Act and Rules.

14. Having regard to the above facts and circumstances of the case coupled with Rule 10 (3) (b) (ii), I am of the opinion that the petitioner is not liable to pay the license fee for the first quarter pertaining to the period 1st July to 30th September. However, it is made clear that the petitioner is liable to pay only 3/4th of the annual license fee for the reason that the license was granted to the petitioner after 1st October and before 31st December.

Accordingly, the writ petition is allowed as prayed for. There shall be no order as to costs.

14-06-2007

Note:

L.R. copy to be marked.

(B/o)

Prv